the officer to tear out the back seat to investigate further. (P/E/, pp 16, 18, 92). The officer then obtained a search warrant for the trunk of the vehicle and secured a locksmith to open the trunk. (P/E, pp 20-21). About three and-a-half hours after the stop began, the trunk was opened, revealing cocaine and marijuana. (P/E, pp 20-21, 32).

Lower Court Proceedings

Petitioner was charged with offenses under Michigan law involving possession of cocaine and marijuana with intent to deliver.[1] The Cheboygan County Circuit Court denied Petitioner's motion to suppress the evidence seized from the trunk of the car. (See Trial Record, Opinion and Order, 4/29/03, and Opinion and Order, 5/8/03, both of which are attached as part of the appendix to this Petition). The County Circuit Court held that Petitioner's statement about staying at the Holiday Inn, when there was no such hotel in

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[1] The other occupants of the car were also charged with narcotics offenses. One occupant pleaded guilty to lesser offenses, and the charges against the other occupant were dismissed at the Preliminary Examination. The instant Petition does not assert any claims on behalf of the other occupants of the car.

Cheboygan, constituted reasonable suspicion to justify the police officer's continued detention beyond the scope of the initial traffic stop. *Id.*

Petitioner appealed as a matter of right from his convictions and sentences after a bench trial. The Michigan Court of Appeals, in an unpublished per curiam opinion, reversed Petitioner's convictions, ruling that the police officer lacked the requisite reasonable suspicion required to extend a traffic stop to investigate matters beyond the scope of the initial traffic stop. (*People v Williams*, unpublished opinion per curiam of the Michigan Court of Appeals, issued August 5, 2004 [Docket No. 249853]; 2004 WL 1753139, a copy of which is included in the appendix to this Petition).

The State of Michigan sought discretionary review from the Michigan Supreme Court. In the State's application for leave to appeal, the State argued that the Michigan Supreme Court should recognize a split of authority among the U.S. Circuit Courts of Appeals regarding whether reasonable suspicion is required to extend a traffic stop to

question a driver about matters beyond the scope of the initial stop. The State argued that the Michigan Supreme Court should adopt the view of some Circuits, that any questions be permitted, even if unrelated to the reason for the traffic stop, provided that those questions are reasonable in scope and do not significantly increase the length of the detention. (See *People v Williams*, Michigan Supreme Court Case No. 127115; Application for Leave to Appeal, statement of questions presented).

The Michigan Supreme Court, without conducting oral argument on the matter, issued an opinion reversing the Court of Appeals. *People v Williams*, 696 N.W.2d 636 (Mich. 2005). The Michigan Supreme Court relied almost exclusively on cases from the U.S. Circuit Courts of Appeals. However, the Michigan Supreme Court did not indicate that a split of authority existed. Instead, the Michigan Supreme Court simply asserted, citing various federal cases, that during a traffic stop, a police officer may "ask reasonable questions in order to obtain additional information about the

underlying offense and the circumstances leading to its commission." *Id.*, 641. And the Court also held, "Implicit in the authority to ask these questions is the authority to ask follow-up questions when the initial answers given are suspicious." *Id.*

Therefore, the Michigan Supreme Court dispensed with the requirement that, in order to extend the scope of a traffic stop to investigate matters unrelated to the reasons for that stop, a police officer must possess a reasonable, articulable, and particularized suspicion, based on some objective manifestation of criminal activity. Justice Marilyn J. Kelly issued a dissenting opinion, insisting that the Court had "enlarge[d] the permissible scope of an inquiry by a police officer during a routine traffic stop." *Id.*, 643-644 (Kelly, J., dissenting).

Petitioner now seeks a writ of certiorari from the judgment of the Michigan Supreme Court.

REASONS FOR GRANTING THE WRIT

Certiorari would be warranted in this case, for the reason that a split of authority exists among the federal circuits regarding the proper scope of questioning by a police officer during a routine traffic stop. Additionally, the Michigan Supreme Court's ruling allows police officers to extend a traffic stop, even where the officer acknowledges that the purpose for that stop is completed, to question a motorist further when the motorist's answers to initial questions are "suspicious." The Michigan Supreme Court did not require a showing of "reasonable suspicion," and indeed, the officer in this case lacked any articulable, particularized suspicion. As a result, Petitioner's rights under the Fourth Amendment were violated. This Court's review is needed in order to clearly delineate the proper scope of questioning during a routine traffic stop, in order to avoid such constitutional violations as occurred in this case.

The Circuits are Split regarding Scope of Proper Questions

In the State of Michigan's application for leave to appeal to the Michigan Supreme Court, it asserted that the Michigan Supreme Court should review the case due to a split of authority among the federal circuits, and change the Michigan approach to one more consistent with that taken by the Seventh Circuit and others. The Michigan Supreme Court relied almost exclusively on federal cases in its opinion, in which it adopted an approach allowing a broad scope of questioning during a traffic stop.

The circuits are divided concerning the proper scope of questions during a routine traffic stop. For example, the Eleventh Circuit, in *United States v Boyce*, 351 F.3d 1102, 1103-1104 (11th Cir. 2003), held that controlled substances seized from the defendant's car must be suppressed where there was no reasonable suspicion to extend a traffic stop beyond the time needed to process the initial traffic violation. The court held that a traffic stop "may not last any longer than necessary to process the traffic violation unless there is

articulable suspicion of other illegal activity." *Id.*, 1106. However, the court recognized a conflict among the circuits regarding whether questions asked during a traffic stop must be limited to those justified by reasonable suspicion or reasonable safety concerns (a test required by the Tenth Circuit), or whether questions unrelated to the reasons for the initial stop are permissible as long as the duration of the stop is not prolonged (an approach taken in the Fifth Circuit). *Id.*, 1111. The Court did not need to reach the issue in that case, however, because the police officer's questions did extend the duration of the stop without reasonable suspicion, thereby requiring suppression under either approach. *Id.*

The Sixth Circuit has also recognized this conflict. In *United States v Garrido-Santana*, 360 F.3d 565, 574 (6th Cir. 2004), the court made the following observation:

> The circuit courts generally agree that the Fourth Amendment requires that, absent additional justification, any questioning during a valid traffic stop must not prolong the detention necessary to complete the initial purpose of that stop; however, there is some disagreement as to whether the Fourth Amendment also requires that, absent additional

> justification, such questioning must be reasonably related in subject matter to the purpose of the initial traffic stop.

The Sixth Circuit did not reach the issue, but recognized that it was "an important legal issue." *Id.*, 575. The court noted that the Fifth Circuit and Seventh Circuits did not limit the scope of questioning to those related to the purpose of the initial stop (citing *United States v Shabazz*, 992 F.2d 431, 436-437 (5th Cir. 1993) and *United States v Childs*, 277 F.3d 947, 949 (7th Cir. 2002)), while the Ninth and Tenth Circuits required that the officer's questions be reasonably related in scope to the purpose for the initial stop (citing *United States v Murillo*, 255 F.3d 1169, 1174 (9th Cir. 2001) and *United States v Holt*, 264 F.3d 1215, 1228-1231 (10th Cir. 2001)). See also *United States v Guerrero*, 374 F.3d 584, 589 (8th Cir. 2004) (holding that a police officer must have reasonable suspicion in order to extend the scope of a traffic stop beyond its initial purpose).

This Court has recognized that "a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution." *Illinois v Caballes*, ___ US ___, 125 S. Ct. 834, 837, 160 L.Ed.2d 842 (2005). In this case, although the initial traffic stop for speeding was lawful, the police officer impermissibly extended the scope of his questions beyond the speeding violation.

When the officer asked Petitioner's destination and Petitioner stated that he was going to Cheboygan and would be staying at the Holiday Inn, the officer ordered Petitioner out of the car for further questioning unrelated to the speeding violation. The officer then questioned Petitioner about, among other things, whether he had a criminal history, or whether he had ever been in trouble for narcotics. The officer admitted that the purpose for the speeding stop had ceased, and that he was now investigating a different matter. Thus, the officer's questions and continued detention of Petitioner impermissibly extended the traffic stop, without

any reasonable suspicion for doing so. This Court's review is warranted, in order to clarify the proper scope of questioning during a traffic stop and resolve a split of authority among the federal circuits.

The Michigan Supreme Court dispensed with a requirement of Reasonable Suspicion to extend the Stop

Certiorari is also warranted due to the Michigan Supreme Court's expansion of police authority to detain a motorist without reasonable suspicion.

The Michigan Supreme Court held that an officer may ask questions "about the underlying offense and the circumstances leading to its commission." *People v Williams*, 696 N.W.2d 636, 641 (Mich. 2005). The Court then went even further, holding as follows: "Implicit in the authority to ask these questions is the authority to ask follow-up questions when the initial answers given are suspicious." *Id.*

The trial court and the Michigan Court of Appeals decided this case based on a determination whether the police

officer possessed the requisite *reasonable* suspicion to extend the scope of the traffic stop, as the term "reasonable suspicion" has been delineated through case law. However, the Michigan Supreme Court dispensed with that requirement entirely, allowing the stop to be extended whenever the motorist's answers are "suspicious." Notably absent from that ruling is the word "reasonable." Indeed, the Michigan Supreme Court noted its belief that "[i]t is unnecessary to consider whether Trooper Varoni had an independent, reasonable, and articulable suspicion that defendant was involved with narcotics." *Id.*, 642.

Thus, the Michigan Supreme Court allowed the officer to extend the scope of the initial stop based on any level of suspicion at all. It is axiomatic that reasonable suspicion, although a low threshold, requires something more than in inchoate suspicion or "hunch." Yet in this case, the officer possessed only such a hunch. The officer, by his own testimony, could not "put his finger" on anything, but had an "unparticularized" feeling that "something wasn't quite

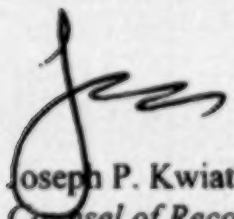
right." This was based solely on Petitioner's statement that he would be staying at the Holiday Inn, coupled with the officer's knowledge that there was no Holiday Inn in Cheboygan, although there was on in a nearby town.

The Michigan Court of Appeals correctly concluded that this did not amount to reasonable suspicion to justify the extension of the traffic stop to question Petitioner about matters unrelated to that stop. The Michigan Supreme Court did not reject that conclusion, but instead held that a showing of reasonable suspicion was not even required. This was a serious constitutional error that warrants issuance of the writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted



Joseph P. Kwiatkowski
Counsel of Record for Petitioner
Aaron J. Gauthier
PATRICK & KWIATKOWSKI, PLLC
520 North Main Street, Suite 320
Cheboygan, MI 49721
(231) 627-7151

August 3, 2005

Supreme Court, U.S.
FILED
05-197 AUG 8 - 2005
OFFICE OF THE CLERK

No. 05-_____

In The

Supreme Court of the United States

John Lavell Williams,

Petitioner,

v.

State of Michigan,

Respondent.

On Petition for a Writ of Certiorari
To the Michigan Supreme Court

PETITIONER'S APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Joseph P. Kwiatkowski
Counsel of Record for Petitioner
Aaron J. Gauthier
PATRICK & KWIATKOWSKI, PLLC
520 North Main Street, Suite 320
Cheboygan, MI 49721
(231) 627-7151

August 3, 2005

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CHEBOYGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v File No. 03-2709 FH

JOHN LAVELL WILLIAMS,

Defendant.
_____/

OPINION AND ORDER

Defendant in the present case is charged in a two count information alleging that he possessed with intent to deliver 50 grams or more of a substance containing cocaine and also possessed with intent to deliver the controlled substance, marijuana. Defendant has now moved to suppress the evidence consisting of these controlled substances seized from his automobile asserting that the search and seizure was predicated upon an illegal detention.

The parties have stipulated that this Court should consider as a factual basis for this motion the transcript of the preliminary examination conducted in this matter on February 26, 2003. That transcript reveals that the Defendant's automobile was stopped on February 14, 2003, at approximately 4:16 p.m. when it was clocked at 88 miles per hour.

The State Trooper testified that upon approaching the Defendant who was driving the automobile, that he requested the standard paper work form the Defendant and also

inquired as to where the Defendant was going. The Defendant advised the Trooper that he was going to Cheboygan to visit friends for a couple of days and would be staying in the Holiday Inn. Knowing that there is no Holiday Inn located in Cheboygan, Michigan, the Trooper found this suspicious. The Trooper also testified that he found the fact that there were three adults in the car and there was no luggage visible on the inside of the vehicle suspicious as well.

In any event, based upon his suspicions, the Trooper wished to discuss the matter further with the Defendant and asked him to exit the vehicle which the Defendant did. It appears that the officer then spent approximately a few minutes with this Defendant outside of the vehicle and at that time the Defendant advised the trooper that he would be spending approximately two days at the Holiday Inn. He also advised the Trooper that there was no luggage because he had no clothing with him other than what he was wearing. The Defendant, disclosed that he had a prior narcotics arrest history involving marijuana.

After this questioning, the Trooper then asked the front seat passenger, Mr. King, to exit the vehicle. The Trooper then briefly questioned Mr. King who advised him that he was unaware as to where he was going or how long the trip was to be.

The Trooper then spoke with the Defendant's wife, Mrs. Williams, who was seated in the back seat. She advised the Trooper that they were going to Cheboygan to do some shopping and then shop at strip malls on their return to the Detroit area. Mrs. Williams was unaware of where they would be staying. As each minute of the stop went by, the Trooper heard additional inconsistencies which reasonably added to his suspicions.

The Trooper then spoke with the Defendant and advised the Defendant of his perception that there were many inconsistencies and conflicts between the stories given by the three adults present. The Trooper then asked for Mr. Williams' consent to search the vehicle which was given.

The above scenario, from the time of the stop until the consent to search was given, lasted approximately five to eight minutes. The Defendant correctly asserts that this five to eight minute delay was not for purposes of writing a traffic violation which was the reason for the initial stop but instead was the result of police officer's questioning based upon his suspicion that criminal activity may be underfoot.

The Court would find that based upon the facts and circumstances presented in the preliminary examination transcript, this was not an illegal detention of the Defendant.

The statements concerning staying at the Holiday Inn coupled with the other statements of this Defendant and the other occupants of the car raised reasonable suspicion in the mind of the Trooper. The lack of luggage in the car does not support any reasonable suspicion but in light of all the other facts, this is not controlling. It could reasonably be concluded that there was a good possibility that these individuals were being dishonest with the Trooper. It would justify the Trooper's suspicion that some type of illegal action was occurring.

> "In People v. Christie (On Remand), 206 Mich App 304, 308; 520 NW2d 647 (1994), this court explained the standard applicable to a police officer's investigative stop of a criminal suspect:
>
> > It is well established at brief investigative stops short of arrest are permitted where police officers have a reasonable suspicion of on going criminal

activity. Terry v. Ohio, 392 US 1, 16; 88 S Ct 1868; 20 L Ed 2d 889 (1968); People v. Faucett, 442 Mich 153, 168; 499 NW 2d 764 (1993). The totality of the circumstances test is to be used in cases involving investigative stops. Id, citing US v. Cortez, 449 US 411; 10-1 S Ct 690; 66 L Ed 2d 621 (1981). The Cortez court warned against overly technical reviews of a police officer's common-sense assessment of the probability that criminal activity is underfoot. Faucett, supra at 168.

In determining whether the police officer's suspicion for making the investigative stop was reasonable, '(C) ommon sense and everyday life experiences predominate over uncompromising standards' Nelson, supra at 635-636. Deference should be given to the police officer's experience and the known patterns of certain types of lawbreakers. Id. At 636. In , supra at 635-636. Deference should be given to the police officer's experience and the known patterns of certain types of lawbreakers. Id. At 636. In People v. Champion, 452 Mich 92, 98; 549 NW 2d 849 (1996), our Supreme Court further explained the reasonable suspicion required in order to justify a Terry investigative stop: 'Reasonable suspicion entails something more than an inchoate or unparticularized suspicion of "hunch", but less than the level of suspicion required for probable cause.'

If an investigative stop of an automobile is proper, the officer is 'permitted to briefly detain the vehicle and make reasonable inquiries aimed at confirming or dispelling his suspicions.' People v. Yeoman, 218 MA 406, 411; 554 NW 2d 577 (1996), citing Nelson, supra at 637."

People v. Rizzo, 243 MA 151, 155, 156 (2000).

The delay in this case of less than of 10 minutes was not unreasonable under the facts presented.

NOW, THEREFORE, IT IS ORDERED that Defendant's motion to suppress is hereby denied.

Dated: 4-29-03

s/ Scott L. Pavlich

HONORABLE

SCOTT L. PAVLICH

53rd Circuit

Court

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF CHEBOYGAN

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v File No. 03-2709 FH

JOHN LAVELL WILLIAMS,

Defendant.
_____/

OPINION AND ORDER

This Court has previously denied Defendant's Motion to Suppress Evidence based on search and seizure issues and Defendant has now moved for reconsideration of that Order. The Court is not persuaded that reconsideration is merited.

There is no dispute in the case at bar that after the Trooper made the initial traffic stop for the speeding infraction of driving 88 mph in a 70 mph zone, a second investigatory stop ensued. This second stop or detention occurred as a result of the Defendant stating to the Trooper that he would be going to Cheboygan and staying at a Holiday Inn when in fact there is no Holiday Inn in Cheboygan. The Trooper stated that this inaccuracy in Defendant's statement raised a suspicion in his mind that criminal activity may be afoot. The Trooper did not articulate a specific criminal act but this is not required. The misleading statement made by the Defendant was the particularized fact that the officer described as raising a suspicion in his mind. This created a reasonable basis for the Trooper to question the Defendant further.

Defendant's argument that the Court's earlier opinion looked to facts occurring after the initial stop to justify the stop is misplaced. The Court's opinion remains that over the 6 to 8 minutes of this second investigatory stop, more and more facts evolved that would strengthen the Trooper's suspicions generated by the initial misleading statement by the Defendant. The Court is of the opinion that it must review this matter and look at the totality of the circumstances and as the delay lengthened, more and more facts came to light which would support the Trooper's suspicions.

The Defendant further argues, in its Motion for Reconsideration, that this Court should consider testimony given in another case in another court by this Trooper. This would not be appropriate material to consider under this Motion for Reconsideration.

NOW, THEREFORE, IT IS ORDERED, for the reasons set forth above, Defendant's motion to reconsider is hereby denied.

Dated: 5-8-03

s/ Scott L. Pavlich

HONORABLE

SCOTT L. PAVLICH

53rd Circuit

Court

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

UNPUBLISHED
August 5, 2004
No. 249853
Cheboygan Circuit Court
LC No. 03-002709-FH

JOHN LAVELL WILLIAMS,

Defendant-Appellant.

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of possession with intent to deliver between fifty and 224 grams of cocaine, MCL 333.7401(2)(a)(iii), and possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii). He was sentenced to consecutive prison terms of seven to twenty years and two to four years for his respective convictions. Defendant appeals as of right, arguing that the trial court erred by denying his motion to suppress evidence and by denying his motion to strike a prosecution witness. We reverse.

On February 14, 2003, defendant's vehicle was searched pursuant to consent and a search warrant after he was stopped for traveling at an extensive rate of speed on northbound I-75 in Cheboygan County. During the search, the troopers discovered cocaine and marijuana in the trunk of the vehicle. Before trial, defendant moved to suppress the

evidence, arguing that his detention following the traffic stop violated the Fourth Amendment of the United States Constitution and therefore resulted in an illegal seizure.

At the suppression hearing,[1] Michigan State Police Trooper Jason Varoni testified that he was positioned in the median on I-75 just south of M-68 when he observed an older blue Chevy four-door vehicle that appeared to be speeding. He activated the radar and clocked the vehicle at eighty-eight miles per hour. At approximately 4:20 p.m., the trooper pulled out and conducted a traffic stop of the vehicle, which contained three black occupants. Defendant, the driver of the vehicle, presented the necessary paperwork to the trooper and, in response to questioning by the trooper, indicated that he was going to Cheboygan to visit friends and that he was staying at the

[fn 1 The parties stipulated to the use of the transcript of the preliminary examination for deciding the motion to suppress.]

Holiday Inn. The trooper knew that there was not a Holiday Inn in Cheboygan and observed that there was no luggage in the passenger compartment that would indicate a stay. Before issuing a warning or a ticket, the trooper asked defendant to step out of the vehicle. Defendant identified his backseat passenger as his wife, Sherrie Williams, and his front seat passenger as Keithan King. In response to questioning, defendant stated that he was coming from Detroit and that he was going to be staying in Cheboygan for "about two days." Defendant also stated that he did not have any luggage in the vehicle, "other than the clothes he was wearing." Defendant also stated that he had been arrested previously "for marijuana." At that point, defendant was asked to return to his vehicle, and the trooper questioned King.

King indicated that he did not know where he was going and did not know how long he was going to be gone. King stated that he did not have any baggage or clothing with him for the trip. King returned to the vehicle and Trooper Varoni spoke with Sherrie Williams through the back window of the vehicle. Sherrie indicated that she was going to Cheboygan to go shopping and that they were going to stop and shop at strip malls on the way back to Detroit. She indicated that she did not know where they would be staying and that they did not have any reservations. The conversations took a total of approximately five to eight minutes.

Trooper Varoni then advised defendant of the different stories between the three occupants and asked defendant if he would consent to a search of the car. Defendant consented, and a canine unit arrived at the scene in approximately three minutes. The dog had a positive alert in the backseat where Sherrie Williams had been seated, in the area where the seat and the backrest come together.

After the dog alerted, Trooper Varoni asked defendant if he had a key to the trunk. Defendant answered that he did not carry a key and, ultimately, a search warrant was obtained at approximately 7:30 p.m. During the search of the trunk the troopers found a Best Western laundry bag behind a speaker box. The bag contained a large zip lock baggie containing suspected marijuana and a sandwich baggie contained suspected cocaine. Defendant was arrested on suspicion on possession with intent to deliver cocaine and marijuana.

Defendant moved to suppress the evidence, arguing that the search and seizure was predicated upon an illegal detention. He asserted that the trooper did not have a reasonable suspicion to detain defendant after the initial

traffic stop was concluded or to ask defendant to step out of the vehicle. The trial court denied the motion, finding that:

> The statements concerning staying at the Holiday Inn coupled with the other statements of this Defendant and the other occupants of the car raised reasonable suspicion in the mind of the Trooper. The lack of luggage in the car soes [sic] not support any reasonable suspicion but in light of all the other facts this is not controlling. It could reasonably be concluded that there was a good possibility that these individuals were being dishonest with the Trooper. It could justify the Trooper's suspicion that some type of illegal action was occurring.

I

This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error and those findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made. *People v Davis,* 250 Mich App 357, 362; 649 NW2d 94 (2002). However, the lower court's ultimate ruling with regard to the motion to suppress is reviewed de novo because the application of constitutional standards regarding searches and seizures to undisputed facts is entitled to less deference. *People v Oliver,* 464 Mich 184, 191; 627 NW2d 297 (2001).

II

Both the United States and Michigan Constitutions guarantee the right against unreasonable searches and seizures. US Const, Am IV; Const 1963, art 1, § 11. The state and federal constitutions do not forbid all searches and seizures, only unreasonable ones. *Harris v United States,* 331 US 145, 150; 67 S Ct 1098; 91 L Ed 1399 (1947); People *v Jordan,* 187 Mich App 582, 586; 468 NW2d 294 (1991).